

**Letter of Findings: 04-20210081
Gross Retail and Use Tax
For the Years 2017 and 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

After protesting an assessment of additional sales and use tax, Indiana Building Contractor provided explanation and documentation sufficient to warrant a review of that documentation by the Audit Division.

ISSUE

I. Gross Retail and Use Tax - Documentation.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-14](#).

Taxpayer argues that the Department's assessment of additional sales and use tax is overstated because it can now provide documentation establishing that a number of the audit entries were erroneous.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of installing flat and metal roofing. Taxpayer conducts business both in and outside Indiana.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's tax returns and business records. During the course of the audit, the Department determined that Taxpayer's records were inadequate. As explained in the audit report:

The [T]axpayer was unable to provide clear and complete records. The [T]axpayer did not provide general ledgers, [and] receipts for credit card purchases or a majority of their purchase invoices.

The audit resulted in an assessment of additional sales and use tax. The assessment was issued because:

[T]axpayer purchased various items for which no documentation or vendor receipts were provided demonstrating that sales tax was paid or use tax was remitted.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Gross Retail and Use Tax - Documentation.

DISCUSSION

The issue is whether Taxpayer has provided supplemental documentation establishing that the audit report contains various entry errors and that - as a result - the assessment should be adjusted to correct those errors.

As a threshold issue, it is the Taxpayer's responsibility to establish that the sales and use tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests

with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "When [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states in relevant part:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed by IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due if sales tax was not paid at the time of the transaction, unless an applicable exemption is available. [45 IAC 2.2-3-14](#).

There is no dispute that Taxpayer is required to pay sales tax on its non-exempt purchases. Alternatively, Taxpayer is required to self-assess use tax on its non-exempt purchases when sales tax is not paid at the time of the transaction.

Taxpayer and the Department agree that there are no substantive questions here at issue. Both Taxpayer and the Department agree that certain Taxpayer purchases were subject to tax. However, Taxpayer explains that the audit report contains unintentional mistakes; the audit report states that an invoice was for one price while Taxpayer states that it can now establish that the invoice price was less.

It is worth noting that Taxpayer failed to meet its statutory obligation to maintain and produce records during the course of the audit. "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times."

Taxpayer produced various documents - including invoices - which purport to support its position. For example, in November 2017 Taxpayer purchased "wood fiberboard" and "roof screws" from one of its vendors. According to Taxpayer, the audit assessed tax on the purchase price, but the invoice establishes that Indiana sales tax was charged and paid.

In another instance, Taxpayer states that the audit assessed tax on a June 2018 purchase of "wholesale clothing" listing the price paid as \$6,669. Taxpayer explains that the amount is wrong and that the original invoice states that the price paid was \$518.95.

The information provided justifies a review and adjustment of the original audit calculation. The Department's Audit Division is requested to review the additional documentation and implement any adjustments that are warranted by that review.

FINDING

To the limited extent set out in this Letter of Findings, Taxpayer's protest is sustained.

October 14, 2021

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